

AMENDED IN SENATE JUNE 26, 2003
AMENDED IN ASSEMBLY MAY 13, 2003
AMENDED IN ASSEMBLY MAY 1, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1492

**Introduced by Assembly Member Laird
(Coauthor: Assembly Members Berg, Hancock, Jackson, Koretz,
Lowenthal, and Wolk)**

February 21, 2003

An act to amend Section 51257 of, and to add Section ~~51282.1~~ 51250 to, the Government Code, relating to agricultural land conservation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1492, as amended, Laird. Agricultural land conservation.

The Williamson Act, until January 1, 2004, in order to facilitate a lot line adjustment, authorizes parties to mutually agree to rescind a land conservation contract or contracts and simultaneously enter into a new contract or contracts covering the adjustment if the board of supervisors or city council makes specified findings.

This bill instead, until January 1, 2008, would prohibit a city or county from approving a lot line adjustment of land subject to a contract unless it makes similar but revised findings and would permit the parties to rescind the contract or contracts and simultaneously enter into a new contract or contracts of not less than 10 years if the board or council makes additional findings.

Existing law authorizes the cancellation of an agricultural land conservation contract upon request of the landowner if the board of

supervisors or city council makes specified findings and upon the payment of a cancellation fee. Existing law also provides principles of compatibility by which a board or council may approve compatible uses on contracted lands.

This bill would provide that any commercial, industrial, or residential building constructed on a parcel subject to a contract that is ~~not related to and not necessary for the long-term agricultural productivity of the parcel~~ not expressly *prohibited by the contract* or is not authorized by the contract or by ~~compatible use~~ local uniform rules or ordinances *and is not related to an agricultural use or compatible use* is a material breach of contract. This bill would require the Department of Conservation to notify the city or county administering the contract of a possible breach. The bill would require the city or county upon notification by the department, or upon its discovery of a possible breach to determine the validity of the contract and whether the breach is material. The bill would require the city or county to notify the department of its determination, to notify the landowner of his or her right to request a hearing or to return the site to the prebreach status and to schedule the hearing. The bill would require the city or county, upon the failure of the ~~contractholder~~ landowner to respond or to return the site to the prebreach status to assess a monetary penalty and to cause to be recorded a certificate of contract termination by breach. The bill would also require the recording of a lien against the property, based on the value of the construction or improvements, that would be payable to the county treasurer. By imposing these duties on local government officers this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

1 SECTION 1. *Section 51250 is added to the Government*
2 *Code, to read:*

3 51250. (a) *The purpose of this section is to identify certain*
4 *structures that constitute material breaches of contract under this*
5 *chapter and to provide an alternate remedy to a contract*
6 *cancellation petition by the landowner. Accordingly, this remedy*
7 *is in addition to any other available remedies for breach of*
8 *contract.*

9 (b) *For purposes of this section, a breach is material if, on a*
10 *parcel under contract, a commercial, industrial, or residential*
11 *building is constructed that is either of the following:*

12 (1) *Expressly prohibited by the contract.*

13 (2) *Not authorized by this chapter; the contract, local uniform*
14 *rules or ordinances consistent with the provisions of this chapter*
15 *and not related to an agricultural use or compatible use authorized*
16 *pursuant to Section 51238.3.*

17 (c) *The department shall notify the city or county if the*
18 *department discovers a possible breach.*

19 (d) *The city or county shall, upon notification by the*
20 *department or upon discovery by the city or county of a possible*
21 *breach, determine if there is a valid contract and if the breach is*
22 *material. In its investigation, the city or county may not endeavor*
23 *to contact the contracting landowner or his or her representative*
24 *to learn the landowner's explanation of the facts and*
25 *circumstances related to the possible breach.*

26 (e) *The city or county shall notify the department of its*
27 *determination regarding the breach and the reasons for that*
28 *determination within 60 calendar days of the discovery of a*
29 *possible breach. The notification shall include a copy of the*
30 *contract.*

31 (f) *If the city or county determines there is a material breach of*
32 *a contract, the city or county shall provide notice by certified mail*
33 *to the landowner or his or her representative within 10 calendar*
34 *days of notifying the department. Within 60 calendar days of*
35 *receiving that notice, the landowner or his or her representative*
36 *shall have the right to request a hearing to contest the city's or*
37 *county's determination that a material breach has occurred or to*

1 request 60 calendar days within which to return the site to the
2 prebreach status.

3 (g) If the landowner requests a hearing with the city or county,
4 the city or county shall schedule a hearing with the landowner no
5 more than 60 calendar days from receipt of the landowner's
6 request. The city or county shall notify the landowner and the
7 department of the date set for the hearing at least 30 days prior to
8 the hearing. If the department decides not to send a representative
9 to attend the hearing, it shall notify the city or county within five
10 days of the hearing to provide to the department, at the
11 department's expense, a recorded transcript of the proceedings
12 within 30 days after the hearing. The city or county, with the
13 concurrence of the department, may negotiate with the landowner
14 a monetary penalty that is not less than half of the amount specified
15 in subdivision (j) and not more than the amount specified in
16 subdivision (j).

17 (1) In determining the penalty to be assessed against the
18 landowner for material breach, the city or county shall consider
19 the following factors:

20 (A) The nature, circumstances, extent, and gravity of the
21 breach.

22 (B) Whether the landowner's actions were willful, knowing, or
23 negligent with respect to the breach.

24 (C) The landowner's culpability in contributing to the breach
25 and whether actions of prior landowners subject to the contract or
26 actions of the city or county contributed to the breach.

27 (D) Other mitigating or aggravating factors that justice may
28 require.

29 (2) Upon request of the landowner, the city or county shall
30 provide a written statement of reasons in support of the penalty
31 assessed.

32 (h) If no agreement is reached pursuant to subdivision (g), the
33 landowner may pursue any other legal remedy that is available.

34 (i) If the landowner fails to respond to the city's or county's
35 notice or fails to otherwise return the site to the prebreach status
36 within 60 calendar days, the city or county shall assess a monetary
37 penalty pursuant to subdivision (j) for material breach of the
38 contract.

39 (j) (1) The maximum monetary penalty for breach shall be an
40 amount equal to 25 percent of the unrestricted fair market value

1 of the land rendered incompatible by the breach, plus an amount
2 equal to 25 percent of the value of the incompatible building and
3 all related improvements on contracted land. The basis for
4 valuation of the penalty shall be an independent appraisal of the
5 current unrestricted fair market value of the property subject to
6 contract and affected by the incompatible use or uses, and a
7 valuation of any buildings and related improvements within the
8 area affected by the incompatible use or uses. The cost of the
9 appraisal shall be borne by the landowner and shall be deducted
10 from any penalty assessed by the city or county for material breach.

11 (2) The appraisal, for purposes of penalty valuation under this
12 section, shall not be subject to appeal either pursuant to Section
13 51203 or to Section 1604 of the Revenue and Taxation Code.

14 (k) The assessment of a monetary penalty pursuant to
15 subdivision (g) or (i) shall be secured by a lien payable to the
16 county treasurer of the county within which the property is located,
17 in the amount assessed pursuant to subdivision (g) or (i). Once
18 properly recorded and indexed, the lien shall have the force, effect,
19 and priority of a judgment lien. The lien document shall provide
20 both of the following:

21 (1) The name of the real property owner of record and shall
22 contain either the legal description or the assessor's parcel
23 number of the real property to which the lien attaches.

24 (2) A direct phone number and address that interested parties
25 may contact to determine the final amount of any applicable
26 assessments and penalties owing on the lien pursuant to this
27 section.

28 (l) If the lien is not paid within 60 days of recording, simple
29 interest shall accrue on the unpaid penalty at the rate of 10 percent
30 per year, and shall continue to accrue until the penalty is paid,
31 prior to all other claims except those with superior status under
32 federal or state law.

33 (m) Upon payment of the lien, the city or county shall record a
34 release of lien and a certificate of contract termination by breach
35 with the county recorder for the land rendered incompatible by the
36 breach.

37 (n) The city or county may deduct from any funds received
38 pursuant to this chapter the amount of the actual costs of
39 administering this section and shall transmit the balance of the

1 funds by the county treasurer to the Controller for deposit in the
2 Soil Conservation Fund.

3 (o) If a city or county fails to act within 120 days of the
4 discovery of a possible breach to enforce the requirements of this
5 section, the department may carry out those responsibilities.

6 (1) The city may request in writing to the department, the
7 department's approval for an extension of time for the city or
8 county to act and the reasons for the extension.

9 (2) The department shall notify the city or county 30 days prior
10 to its exercise of any responsibility under this paragraph.

11 (3) This section shall not be construed to limit the authority of
12 the Secretary of the Resources Agency under Section 16146 or
13 16147.

14 (p) This section shall not apply to commercial, industrial, or
15 residential buildings permitted by a city or county prior to January
16 1, 2004.

17 (q) This section does not apply to any proposed building that
18 has been determined, in writing to the landowner, by the city or
19 county, with consultation and concurrence by the department, to
20 be related to, and necessary for, the long-term agricultural
21 productivity of the parcel or is expressly authorized by the contract
22 or by compatible use rules consistent with Section 51238.1,
23 51238.2, or 51238.3. This written determination shall be filed with
24 the county recorder for recording with other recorded documents
25 relating to that parcel.

26 (r) It is the intent of the Legislature to encourage cities and
27 counties, in consultation with contracting landowners and the
28 department, to review existing Williamson Act enforcement
29 programs and consider any additions or improvements that would
30 make local enforcement more effective, equitable, or widely
31 acceptable to the affected landowners. Cities and counties are also
32 encouraged to include enforcement provisions within the terms of
33 the contracts, with the consent of contracting landowners.

34 SEC. 2. Section 51257 of the Government Code is amended
35 to read:

36 51257. (a) In addition to the requirements of the Subdivision
37 Map Act (Division 2 (commencing with Section 66410) of Title
38 7), a city or county with jurisdiction over an agricultural preserve
39 shall not approve a lot line adjustment that otherwise would be
40 valid under the provisions of subdivision (d) of Section 66412, on

land subject to a contract made pursuant to this chapter, unless the administering board or council finds all of the following based on substantial evidence in the record:

(1) The landowner and the city or county have agreed to rescind the existing contract or contracts and enter into a new contract or contracts pursuant to this chapter and the new contract or contracts would enforceably restrict the adjusted boundaries of the parcel for an initial term for at least as long as the unexpired term of the rescinded contract or contracts, but for not less than 10 years.

(2) When the external boundaries of the land subject to a contract or contracts are proposed to be changed, the findings shall include both of the following:

(A) There is no net decrease in the amount of the acreage restricted. In cases where two parcels involved in a lot line adjustment are both subject to contracts rescinded pursuant to this section, this finding will be satisfied if the aggregate acreage of the land restricted by the new contracts is at least as great as the aggregate acreage restricted by the rescinded contracts.

(B) At least 90 percent of the land under the former contract or contracts remains under the new contract or contracts.

(3) After the lot line adjustment, the parcels of land subject to contract will be large enough to sustain their agricultural use, as defined in Section 51222.

(4) The lot line adjustment would not compromise the long-term agricultural productivity of the parcel or other agricultural lands subject to a contract or contracts.

(5) The lot line adjustment is not likely to result in the removal of adjacent land from agricultural use.

(6) The lot line adjustment does not result in a greater number of developable parcels than existed prior to the adjustment, or an adjusted lot that is inconsistent with the general plan.

(7) The lot line adjustment will not affect more than the number of parcels permitted in subdivision (d) of Section 66412.

(8) The only lot lines that may be adjusted are those permitted or recognized under the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7).

(9) Any commercial, industrial, or residential building or buildings constructed on the parcel or parcels that continue to be subject to a contract made pursuant to this chapter are determined

1 to be related to and necessary for the long-term agricultural
2 productivity of the parcel or parcels.

3 (b) Nothing in this section shall limit the authority of the board
4 or council to enact additional conditions or restrictions on lot line
5 adjustments.

6 (c) Only one new contract may be entered into pursuant to this
7 section with respect to a given parcel, prior to January 1, 2008.

8 (d) Within 30 days of approving any lot line adjustment under
9 this section, the board or council shall forward to the department
10 a complete description of the action taken, including maps
11 depicting previous and revised parcel configurations, contracts
12 involved, findings made by the board or council, and any staff
13 reports used in consideration of the adjustment.

14 (e) In the year 2006, the department's Williamson Act Status
15 Report, prepared pursuant to Section 51207, shall include a review
16 of the performance of this section.

17 (f) This section shall remain in effect only until January 1,
18 2008, and as of that date is repealed, unless a later enacted statute,
19 that is enacted on or before January 1, 2008, deletes or extends that
20 date.

21 ~~SEC. 2.—Section 51282.1 is added to the Government Code, to~~
22 ~~read:~~

23 ~~51282.1. (a) For purposes of this section, a breach is material~~
24 ~~if a commercial, industrial, or residential building is constructed~~
25 ~~on the parcel subject to a contract that is not related to and not~~
26 ~~necessary for the long-term agricultural productivity of the parcel~~
27 ~~and is not expressly authorized by the contract or by compatible~~
28 ~~use rules or ordinances consistent with Section 51238.1, 51238.2,~~
29 ~~or 51238.3.~~

30 ~~(b) The department shall notify the city or county if the~~
31 ~~department discovers a possible breach.~~

32 ~~(c) The city or county shall, upon notification by the~~
33 ~~department or upon discovery by the city or county of a possible~~
34 ~~breach, determine if there is a valid contract and if the breach is~~
35 ~~material.~~

36 ~~(d) The city or county shall notify the department of its~~
37 ~~determination regarding the breach and the reasons for that~~
38 ~~determination within 60 calendar days of the discovery of a~~
39 ~~possible breach. The notification shall include a copy of the~~
40 ~~contract.~~

1 ~~(e) If the city or county determines there is a material breach of~~
2 ~~a contract, the city or county shall provide notice by certified mail~~
3 ~~to the landowner or his or her representative within 10 calendar~~
4 ~~days of notifying the department. Within 60 calendar days of~~
5 ~~receiving that notice, the landowner or his or her representative~~
6 ~~shall have the right to request a hearing to contest the city's or~~
7 ~~county's determination that a material breach has occurred or to~~
8 ~~request 60 calendar days within which to return the site to the~~
9 ~~prebreach status.~~

10 ~~(f) If the contractholder requests a hearing with the city or~~
11 ~~county, the city or county shall schedule a hearing with the~~
12 ~~contractholder no more than 60 calendar days from receipt of the~~
13 ~~contractholder's request. The city or county shall notify the~~
14 ~~contractholder and the department of the date set for the hearing~~
15 ~~at least 30 days prior to the hearing. The city or county, with the~~
16 ~~concurrence of the department, may negotiate with the~~
17 ~~contractholder a monetary penalty that is not less than half of the~~
18 ~~amount specified in subdivision (i) and not more than the amount~~
19 ~~specified in subdivision (i). If the department decides not to attend~~
20 ~~the hearing, the city or county shall provide a recorded transcript~~
21 ~~of the proceedings to the department within 30 days after the~~
22 ~~hearing.~~

23 ~~(g) If no agreement is reached pursuant to subdivision (f), the~~
24 ~~landowner may pursue any other legal remedy that is available.~~

25 ~~(h) If the contractholder fails to respond to the city's or county's~~
26 ~~notice or fails to otherwise return the site to the prebreach status~~
27 ~~within 60 calendar days, the city or county shall assess a monetary~~
28 ~~penalty pursuant to subdivision (i) for material breach of the~~
29 ~~contract.~~

30 ~~(i) (1) The monetary penalty for breach shall be an amount~~
31 ~~equal to 25 percent of the unrestricted fair market value of the land~~
32 ~~rendered incompatible by the breach, plus an amount equal to 25~~
33 ~~percent of the value of the incompatible building and all related~~
34 ~~improvements on contracted land. The basis for valuation of the~~
35 ~~penalty shall be a determination by the county assessor of the~~
36 ~~current, unrestricted fair market value of the property that is~~
37 ~~subject to a contract and affected by the incompatible use or uses,~~
38 ~~and a valuation of any buildings and related improvements within~~
39 ~~the area affected by the incompatible use or uses.~~

~~(2) If the department disagrees with the assessor's valuation, the department may obtain an independent appraisal of the property by an appraiser qualified to undertake that valuation. If the department finds the independent appraisal more accurately represents the market value of the affected property or its improvements, it shall inform the city or county and landowner of that determination, and the appraisal shall serve as the basis for determining any penalties.~~

~~(3) Neither the assessor's valuation nor the department's appraisal, for purposes of penalty valuation under this section, shall be subject to appeal either pursuant to Section 51203 or to Section 1604 of the Revenue and Taxation Code.~~

~~(j) The assessment of a monetary penalty pursuant to subdivision (f) or (h) shall be secured by a lien payable to the county treasurer of the county within which the property is located, in the amount assessed pursuant to subdivision (f) or (h).~~

~~(k) If the lien is not paid within 60 days of recording, simple interest shall accrue on the unpaid penalty at the rate of 10 percent per year, and shall continue to accrue until the penalty is paid, prior to all other claims except those with superior status under federal or state law.~~

~~(l) Upon payment of the lien and extinguishment of the lien, the city or county shall file a certificate of contract termination by breach with the county recorder for the land rendered incompatible by the breach. The certificate of contract termination by breach shall include a legal description of the land for which the city or county terminates the contract.~~

~~(m) Within 30 days of receipt of any funds pursuant to this section, they shall be transmitted by the county treasurer to the Controller and deposited in the Soil Conservation Fund. The money in the fund shall be available, when appropriated by the Legislature, for the support of any of the programs of the Division of Land Resource Protection in the Department of Conservation.~~

~~(n) If the city or county fails to carry out its responsibilities pursuant to this article, the department may exercise any right or accept any responsibility for enforcement in place of the city or county.~~

~~(o) This section shall not apply to improvements that are completed prior to January 1, 2004.~~

~~(p) This section does not apply to any proposed building that has been determined, in writing to the landowner, by the city or county, with consultation and concurrence by the department, to be related to, and necessary for, the long-term agricultural productivity of the parcel or is expressly authorized by the contract or by compatible use rules consistent with Section 51238.1, 51238.2, or 51238.3. This written determination shall be filed with the county recorder for recording with other recorded documents relating to that parcel.~~

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

